



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95088; File No. SR-NYSEArca-2022-34]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 6.40P-O and 6.41P-O

June 13, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 3, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.40P-O (Pre-Trade and Activity-Based Risk Controls) and 6.41P-O (Price Reasonability Checks - Orders and Quotes). The proposed rule change is available on the Exchange’s website at [www.nyse.com](https://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rules 6.40P-O (Pre-Trade and Activity-Based Risk Controls) and 6.41P-O (Price Reasonability Checks - Orders and Quotes) to clarify the application of certain risk checks on Pillar as set forth below.<sup>4</sup>

First, the Exchange proposes a clarifying change to Rule 6.40P-O regarding the reference to “Auction-Only Orders” as described below. Rule 6.40P-O describes Activity-Based Risk Controls that are available to Entering Firms.<sup>5</sup> Each Entering Firm may apply one of three activity-based risk limits to its orders and quotes in an options class based on specified thresholds measured over the course of a specified time period or Interval.<sup>6</sup> Rule 6.40P-O(c)(2) sets forth the potential automated breach action for the Activity-Based Risk Controls that the Exchange may take should an Entering Firm exceed its established risk limit. Rule 6.40P-O(d) describes how an Entering Firm's ability to enter orders, quotes, and related instructions would be reinstated after certain automated breach actions have been triggered.<sup>7</sup> And, Rule 6.40P-O(e) sets forth Kill Switch Action functionality that allows an Entering Firm to expressly direct the

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<sup>4</sup> Rules 6.40P-O and 6.41P-O describe certain risk checks available for orders and Market Maker quotes on Pillar. The Exchange notes that because it has not yet migrated to the Pillar platform, Rules 6.40-O (Risk Limitation Mechanism), 6.60-O (Price Protection - Orders) and 6.61-O (Price Protection - Quotes) set forth the applicable risk checks that continue to apply to orders and Market Maker quotes, which rules are not being modified by this filing. The Exchange has announced July 11, 2022 as the planned migration date for Pillar, as announced here: <https://www.nyse.com/trader-update/history#110000421498>.

<sup>5</sup> See Rule 6.40P-O(a)(1) (defining Entering Firms as all OTP Holders and OTP Firms (including those acting as Market Makers)).

<sup>6</sup> See Rule 6.40P-O(a)(3) (defining Activity-Based Risk Controls, which controls are not applied to interest represented in open outcry except for CTB Orders) and Rule 6.40P-O(a)(5) (defining Interval as the configurable time period during which the Exchange would determine if an Activity-Based Risk Control is breached).

<sup>7</sup> See Rule 6.40P-O(c)(2) (applies in the reinstatement of an Entering Firm in the event that a “Block Only” or “Cancel and Block” Automated Breach Action is triggered).

Exchange to take certain bulk cancel or block actions with respect to orders and quotes in the event of a breach. The Exchange applies the aforementioned actions to the quotes and orders submitted by an Entering Firm, unless otherwise specified in the Rule. In particular, the Rule explicitly refers to the handling of Auction-Only Orders in the event of a breach.

Rule 6.62P-O(c) sets forth the order types that qualify as “Auction-Only Orders,” which orders are designated to participate solely in Auctions held during the opening (or reopening) of option series.<sup>8</sup> Subsequent to the adoption of Rule 6.40P-O, the Exchange adopted Rule 6.91P-O, regarding complex order trading. Rule 6.91P-O(b)(2)(C) describes ECO GTX Orders. ECO GTX Orders are utilized solely for a Complex Order Auction or COA, which may only occur once a series opens or reopens.<sup>9</sup> . As such, for the avoidance of doubt, the Exchange proposes to specify (by definition) that “Auction-Only Orders” referred to throughout Rule 6.40P-O refer to the order types set forth in Rule 6.62P-O(c) (Orders and Modifiers) and (by extension) do not include ECO GTX Orders which the Exchange will handle like any other unexecuted (non-Auction Only) order when an Activity-Based Risk Control threshold is breached.<sup>10</sup> The Exchange believes this proposed change would make clear that Auction-Only Orders do not include ECO GTX Orders and, as a result would add clarity and transparency to Exchange rules making them easier to navigate and comprehend.

Next, the Exchange proposes a clarifying change to Rule 6.41P-O regarding the application of the “Price Reasonability Checks” to orders and quotes, which include the

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<sup>8</sup> See Rule 6.62P-O(c)(1)-(3) (defining as Auction-Only Orders: Limit-on-Open Orders (LOO Orders), Market-on-Open Orders (MOO Orders), and Imbalance Offset Orders (IO Orders)).

<sup>9</sup> See Rule 6.91P-O(f) (providing, in relevant part, that a COA may only be conducted when a complex strategy is open for trading).

<sup>10</sup> See proposed Rule 6.40P-O(a)(6). See, e.g., Rule 6.40P-O(c)(2)(C)(iii) (providing that for Entering Firms that opt for “Cancel and Block” handling upon trigger of an Activity-Based Risk Control, “the Exchange will cancel all unexecuted orders and quotes in the Consolidated Book other than Auction-Only Orders and orders designated GTC”).

Arbitrage Check and the Intrinsic Value Check, when such checks rely on last sale information.<sup>11</sup>

In particular, the Arbitrage Check will reject or cancel (if resting) a buy order or quote for call options if the price of the order or quote “is equal to or greater than the last sale price of the underlying security on the Primary Market, plus a specified threshold to be determined by the Exchange and announced by Trader Update.”<sup>12</sup> Similarly, for the Intrinsic Value Check, the Exchange deems the Intrinsic Value of a put option as being “equal to the strike price minus the last sale price of the underlying security on the Primary Market” and the Intrinsic Value of a call option as being “equal to the last sale price of the underlying security on the Primary Market minus the strike price.”<sup>13</sup>

However, certain trades such as odd-lot transactions are not considered “last-sale eligible,” which means the related pricing data is not available/reported. As such, when the Exchange does not have access to such “last-sale eligible” information, it cannot perform the Checks as intended. Therefore, the Exchange proposes to clarify the impacted sections of the Rule to provide that the applicable Checks would use as a reference “the price of the last-sale eligible trade of the underlying security on the Primary Market.”<sup>14</sup> In addition, and consistent with the aforementioned changes, the Exchange proposes to add a provision to Rule 6.41P-O(a)(3), regarding the circumstances under which the Price Reasonability Checks do not apply, to include “any options series for which there is no last-sale eligible trade in the underlying security on the Primary Market since the opening of trading.”<sup>15</sup> The Exchange believes these proposed changes add clarity and transparency to Exchange rules making them easier to navigate

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<sup>11</sup> See Rule 6.41P-O(b) and (c) (describing the Arbitrage Check and the Intrinsic Value Check, respectively).

<sup>12</sup> See Rule 6.41P-O(b)(2).

<sup>13</sup> See Rule 6.41P-O(c)(2)(1)-(2).

<sup>14</sup> See proposed Rule 6.41P-O(b)(2), (c)(1)-(2).

<sup>15</sup> See proposed Rule 6.41P-O(a)(3)(iv). The Exchange also proposes to make non-substantive conforming changes to this paragraph. See proposed Rule 6.41P-O(a)(3)(iii) (removing now-extraneous and) and (v) (re-numbered existing provision), which changes add clarity, transparency, and internal consistency to Exchange rules.

and comprehend.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>17</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to clarify the “Auction-Only Orders” covered in Rule 6.40P-O would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because it would add clarity and transparency to Exchange rules making them easier to navigate and comprehend. Moreover, the proposed change would avoid potential confusion regarding the application of Rule 6.40P-O to ECO GTX Orders (as mentioned in Rule 6.91P-O).

The Exchange believes that the proposed rule change to clarify that the Exchange would rely on “the price of the last-sale eligible trade of the underlying security on the Primary Market,” in conducting certain of the Price Reasonability Checks would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because it would add clarity and transparency to Exchange rules making them easier to navigate and comprehend.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather to clarify the Exchange's rules regarding certain risk checks and how such checks are applied. The proposed change would apply to all similarly-situated market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>20</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>21</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2022-34 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2022-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2022-34 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).